

sign for each four hundred feet (400') of lot frontage. Two (2) signs shall be posted on corner properties. Signs shall be located in such a manner that they are clearly visible from the street. The signs shall be four feet by four feet (4' x 4') in size. The applicant shall provide a dated photograph or photograph with notarized affidavit to the planning department prior to the hearing as evidence of meeting the posting requirements.

- (g) *Expiration of planning board recommendation.* Applicants may postpone city commission review of any application to a maximum of one (1) year following action by the planning board. Any applications not heard by the city commission within that period shall require resubmittal of the project, including all applicable fees and processing requirements as required for a new project.
- (h) *Appeals.* Appeals to the decision of the planning board shall follow procedures established in section 1-19, appeals.

Sec. 1-16. Board of Adjustment and Appeals.

- (a) *Creation and appointment of board members.*
 - (1) A Board of Adjustment and Appeals is hereby created and shall have such membership, powers and duties, responsibilities and limitations as herein provided.
 - (2) The Board of Adjustment and Appeals shall consist of five (5) members and five (5) alternate members who shall be appointed by the city commission. The mayor and each city commissioner shall nominate candidates to serve as regular and alternate members of the board from the general population as provided in section 2-206 of the Code of Ordinances, and all appointments to the board shall be approved by majority vote of the city commission. If any candidate is rejected by the city commission, the city commission member who nominated the candidate may nominate additional candidates in like manner; and if said city commission member chooses not to make such additional nominations, then one (1) or more of the other city commission members may nominate candidates to fill the position in like manner. Alternate members shall be designated as such, and may act only in the temporary absence or disability of regular members, or when a regular member is otherwise disqualified in a particular case before the board. Alternate members shall serve on a rotational basis beginning with the alternate selected by the mayor, then the Zone 1 alternate, and so on in like manner. To the greatest extent possible, the board should be composed of members with expertise in building construction and fire-safety standards.
 - (3) The terms of office for those Board of Adjustment and Appeals members that were appointed by Resolution No. 2008-04 shall expire the day prior to the first regularly scheduled city commission meeting in January 2011. Thereafter, members shall be appointed or reappointed to serve two-year (2) terms that shall expire the day prior to the first regularly scheduled city commission meeting in January of each odd-numbered year.

- (4) Any member of the Board of Adjustment and Appeals may be removed from office for cause by the city commission upon written charges and after a public hearing, if the member so requests.
 - (5) Any vacancy occurring during the unexpired term of office of any member of the Board of Adjustment and Appeals shall be filled for the remainder of the term in the same manner as the original appointment. Such vacancy shall be filled within thirty (30) days from the time it occurs.
 - (6) The Board of Adjustment and Appeals shall elect a chairperson and vice-chairperson of the board for one-year terms, each having eligibility for reelection. Upon the expiration of terms of the chairperson and vice-chairperson, the secretary shall call the first meeting thereafter to order and shall then call for nominations for chairperson. The chief building official or his or her designee shall serve as the secretary of the board.
 - (7) Board members shall be subject to the provisions of chapter 2, article VI, division 1 of the Code of Ordinances, as the same presently exists or may hereafter be amended.
- (b) *Powers and duties.*
- (1) Where it is alleged there is an error in any order, requirement, decision or determination of the chief building official in the enforcement of this Land Development Code, the board shall conduct a hearing on the matter and then make a determination. Such action shall be based upon the record and evidence presented at the hearing and shall include written or verbal comments as presented by city staff or any other individuals of the community who may have an express interest in the matter.
 - (2) The board shall have the power to grant a variance from the literal enforcement of:
 - a. The dimension standards established in chapter 2, articles II and III of this Land Development Code for principal and accessory structures allowed in the respective zoning districts.
 - b. The board shall also have the power to grant variances from literal enforcement of the flood hazard requirements contained in chapter 3, article II of this Land Development Code, provided that such variances are awarded in accordance with the provisions of this article and that any variance granted from strict interpretation of section 3-20 shall be subject to the procedures described in the sections in chapter 3, article II of this Land Development Code.
 - c. Nonconformities as specified in section 2-61.
 - d. The standards of chapter 3, article I, landscaping, and article III, off-street parking circulation and loading, of this Land Development Code.
 - (3) The Board of Adjustment and Appeals is quasi-judicial in nature and is not delegated any legislative powers by this Land Development Code. Any action taken that is not

authorized directly or indirectly by this Land Development Code shall be invalid. Such authority shall be stated in written orders to the chief building official, directing his action on the final disposition of any individual appeal.

- (4) Any interpretation and determination of the chief building official of the state building code shall be appealed to the Board of Adjustment and Appeals.
- (c) *Processing procedure.*
- (1) *Rules of procedure.* The board shall adopt rules of procedure for the transaction of its business, and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record and available for review by any citizen upon request. Meetings of the board shall be held at the call of the chairperson and such other times as the board may determine through its rules of procedure.
 - (2) *Appeals on interpretations.* Appeals to the decisions of the Board of Adjustment and Appeals shall follow procedures established in section 1-19, appeals.
 - (3) *Variances.* The chief building official shall fix a time for a hearing of variance request and shall give public notice of the hearing at least fifteen (15) days prior to the date set for said hearing, not counting the date of publication and the date of hearing as follows:
 - a. In a newspaper of general circulation in the city;
 - b. By posting of notices on the property concerned. On property involving more than one (1) street, notices shall be posted facing each street. Such notices shall state the location of the building or lot, the general nature of the question involved in the appeal, and the time and place of the hearing; and
 - c. By regular mail to all abutting property owners as shown on the latest available tax assessor rolls or condominium association in the case of multifamily condominium.
 - (4) *Voting.* A majority vote of the members of the Board of Adjustment and Appeals shall be necessary to reverse any order, requirement, decision or determination of the chief building official, award a variance, or decide in favor of the applicant on any matter upon which it is required to pass under these regulations.
 - (5) *Stay of work.* An appeal to the board stays all work on that portion of the premises at issue or that portion which may otherwise be affected by the appeal and all proceedings in furtherance of the action appealed from, unless the official from whom the appeal was taken has certified to the Board of Adjustment and Appeals that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings or work shall not be stayed except by a restraining order which may be granted by the Board of Adjustment and Appeals or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.

(d) *Award of variance.*

- (1) *Variations to be considered as part of development review.* Any person desiring to undertake a development activity not in conformance with certain sections of this Land Development Code, except for those matters listed in subsection (b)(2) of this section, may apply for a variance in conjunction with the application for development review.
- (2) *Initial determination.* The Board of Adjustment and Appeals shall first determine whether the need for the proposed variance arises out of the physical surroundings, shape, topographical condition, or other physical or environmental conditions that are unique to the specific property involved and are not the result of the actions of the applicant. If the basis for the request is the unique quality of the site, the board shall make the following required findings based on the granting of the variance for that site alone. If, however, the condition is common to numerous sites so that requests for similar variances are likely to be received, the board shall base its findings on the cumulative effect of granting the variance to all who may apply.
- (3) *Required findings.* A nonconforming use of neighboring lands, structures, or buildings, whether in the same zoning district or other zoning districts, shall not be considered grounds for the authorization of a variance, nor shall the board authorize a variance from any provision of this Land Development Code, unless it makes a positive finding based on substantial competent evidence on each of the following:
 - a. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same zoning district;
 - b. The special conditions and circumstances do not result from the actions of the applicant;
 - c. Literal interpretation of the provisions of these zoning regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these zoning regulations and would work unnecessary and undue hardship on the applicant;
 - d. No practical alternative exists and the variance, if granted, is the minimum variance that will make possible the reasonable use of the land, building or structure;
 - e. The variance request is not based exclusively upon a desire to reduce the cost of developing the site. Financial disadvantages or physical inconvenience to the applicant shall not in and of themselves constitute conclusive proof of unnecessary hardship;
 - f. The proposed variance will not substantially increase congestion on surrounding public streets, the danger of fire, or other hazard to the public;

- g. The effect of the proposed variance is in harmony with the general intent of this Land Development Code and the specific intent of the relevant subject areas of this Land Development Code and will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site;
 - h. Granting the variance requested will not confer on the applicant any special privilege that is denied by this Land Development Code to other lands, buildings or structures in the same zoning district.
- (4) *Existing nonconforming structures.* The city's Board of Adjustment and Appeals may review variance requests to allow for the expansion of the nonconforming portion of a structure. The Board of Adjustment and Appeals shall use the following standards in reviewing requests for expansion of nonconforming structures:
- a. The property where the structure is located meets the minimum lot area standards for the zoning district, as specified in chapter 2, article II of this LDC.
 - b. There are no other ways of altering the structure that will not result in increasing the nonconforming cubic content of the structure.
 - c. The proposed expansion will be consistent with the use of the structure and surrounding structures, given that the use is permitted by right, conditional use or special exception in the zoning district within which the structure is located.
 - d. The proposed expansion effectively squares off an existing building, or does not extend beyond the furthest point of an adjacent building on the site.
 - e. The proposed expansion is in scale with adjacent buildings.
 - f. The proposed expansion will not impact adjacent properties by limiting views or increasing light and/or noise.
- (5) *Imposition of conditions.* In granting a variance, the board may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to allow a positive finding to be made on any of the foregoing factors, or to minimize any potential injurious effect of the variance. Violation of any such conditions and safeguards, when imposed in individual appeals, shall be deemed a violation of this Land Development Code.
- (6) *Transmittal of findings.* The board shall make written findings on the items in subsections (d)(3) or (d)(4) of this section as to whether they have or have not been demonstrated by the applicant for variance. Such findings shall be filed of record and copies sent to the chief building official and recorded in the official records of the clerk of the court for the county.
- (7) *Variance applies to property.* Any variance granted shall apply to the subject property and not to the applicant. A variance shall begin to serve the purpose for which it was granted within twelve (12) months following the granting action by the board, or shall otherwise become void. A shorter period of time may be stipulated by the board in an individual case as a condition imposed pursuant to the preceding section.

- (e) *Appeal.* Any appeal from a decision of the Board of Adjustment and Appeals shall be by petition for a writ of certiorari to the circuit court.
(Ord. No. 2013-38, § 1, 6-18-2013)

Sec. 1-17. Historic Landmark Preservation Board.

- (a) *Establishment.* The Historic Landmark Preservation Board is hereby established as an advisory board to the city commission, and it shall have such membership, functions, responsibilities and limitations as herein provided.
- (b) *Membership.* The board shall consist of nine (9) members who must reside in the city. Each of the following organizations shall nominate one (1) of its members to serve on the board: The Casements Guild and the Ormond Beach Historical Trust. All such nominations must be approved by the city commission. Additionally, the mayor and each city commissioner shall nominate candidates from the general population to serve as members of the board as provided in section 2-206 of the Code of Ordinances, and all appointments to the board shall be approved by majority vote of the city commission. Each member of the city commission shall, initially, nominate one (1) candidate to be considered for appointment by the city commission. If any candidate is rejected by the city commission, the city commission member who nominated the candidate may nominate additional candidates in like manner; and if said city commission member chooses not to make such additional nominations, then one (1) or more of the other city commission members may nominate candidates to fill the position in like manner. In addition, the city commission shall nominate candidates from the general population for the other two (2) board positions, and said appointments shall be approved by majority vote of the city commission. The board should, whenever possible, consist of one (1) general contractor, one (1) architect and five (5) members of the general public. All board members shall have an interest or expertise in historic preservation. No person nominated or appointed to the board shall be required to be currently active in the person's designated field, be currently licensed in the given field, or work in the given field within the city.
- (c) *Terms.*
- (1) The members of the board shall serve two-year (2) terms that shall coincide with the terms of office of the city commission, and board members may be reappointed for successive two-year (2) terms. Any vacancy in an unexpired term shall be filled in the same manner as the original appointment for the remainder of the term. A member of the Historic Landmark Preservation Board may be removed by the city commission only for cause and after being given a written statement of the charges against the member and a public hearing thereon, if the member so requests.
 - (2) Board members shall be subject to the provisions of chapter 2, article VI, division 1 of the Code of Ordinances, as the same presently exists or may hereafter be amended.